

May 20, 2002

Thomas V. Skinner
Regional Administrator
R-19J
USEPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Re: "Deficiency" issues associated with Ohio's Title V permit program

Dear Mr. Skinner:

Pursuant to our discussions with your Air and Radiation Division staff, Ohio EPA has made the following commitments with respect to several issues raised by USEPA that should be adequate to prevent the publication of any further notices of program deficiency for the Ohio Title V operating permit program:

1. A description of the malfunction reports required by the Ohio program and an explanation of how that meets the requirements of 40 CFR Part 70.

Ohio EPA's response: For a malfunction of an emissions unit and/or its associated control equipment (e.g., an "upset" condition), a permittee must report the occurrence immediately to Ohio EPA, either verbally or in writing, in accordance with OAC rule 3745-15-06. If the malfunction continues for more than 72 hours, the permittee must submit an initial written statement to the Agency that provides specific information concerning the malfunction. When the malfunction event is over, the entity must notify the Agency either verbally (if the event lasted less than 72 hours) or in writing (if the event lasted over 72 hours) that "the condition causing the failure or breakdown has been corrected and the equipment is again in operation." Finally, on an annual basis the permittee is obligated to submit a written report (the annual compliance certification) that addresses the permittee's compliance status with each and every term and condition within the Title V permit. This would require the permittee to include those deviations from the appropriate terms and conditions (i.e., emission limitations) that were caused by the malfunctions. Therefore, certification of all reported malfunctions by the responsible official would be required in the annual certification reports. We understand that USEPA continues to believe that this level of reporting is insufficient for purposes of Title V and, as a result, we will require Title V facilities to identify malfunctions in the quarterly deviation reports. Specifically, if the

malfunction was reported in writing as required in OAC rule 3745-15-06, the Title V facility will be required to provide in the quarterly deviation report the date the malfunction report was given to Ohio EPA. If the malfunction was not reported in writing, the information required by OAC rule 3745-15-06 will be required to be included in writing in the quarterly deviation report. All information provided in the quarterly reports shall be certified. This certification by the responsible official shall state that, based on information and belief formed after reasonable inquiry, the statements in the deviation report and the content of any malfunction reports referenced in the deviation report are true, accurate and complete. This will be accomplished by changing the boilerplate general terms and conditions in future Title V permits by no later than May 15, 2002. Also, because USEPA is requiring Ohio EPA to modify the Title V rules in other ways, we intend to review OAC rule 3745-77-03 and develop a more clearly defined approach for the reporting of malfunctions and other deviations.

2. The proper certification of all required quarterly and semi-annual reports.

Ohio EPA's response: By no later than May 15, 2002, Ohio EPA will revise the boilerplate, Title V permit terms and conditions for the quarterly and semi-annual deviation reports to ensure that proper certification language accompanies these reports. Further, Ohio EPA staff will work with USEPA staff on the development of a checklist for our District Office and local air agency staff to follow when reviewing these reports. We will also work with USEPA to determine if additional information is necessary as part of the certification, such as identification of corrective action and preventive measures that will be taken to avoid future violations. If we establish that a report has been submitted without a certification, it will be returned as incomplete. If necessary, appropriate enforcement action will be taken to obtain a complete report.

3. The schedule for completion of the update of the acid rain rules.

Ohio EPA's response: The OAC Chapter 3745-103 rules (Acid Rain Permits and Compliance) package has been sent out to the interested parties for comment. No substantive comments were received and the rule package has been proposed and filed with the Joint Committee on Agency Rule Review (JCARR). We project that JCARR will retain jurisdiction for its minimum 60-day period and then Ohio EPA can promulgate the final rules by approximately June 1, 2002, with an effective date of July 1, 2002.

4. Improvements to the "Statement of Basis" to ensure compliance with OAC rule 3745-77-08 (A)(2).

Ohio EPA's response: USEPA has agreed that the form of Ohio EPA's Statement

of Basis (SOB) complies with OAC rule 3745-77-08(A)(2) and 40 CFR 70.7(a)(5). But Ohio EPA and USEPA staff agree that further guidance to field offices appears to be necessary to consistently prepare adequate SOBs. By May 24, 2002, Ohio EPA agrees to consult with USEPA staff and draft guidance to ensure the proper completion of each SOB consistent with OAC rule 3745-77-08(A)(2) and 40 CFR 70.7(a)(5). The guidance will address, but will not be limited to, negative declarations, periodic monitoring, streamlined terms, and, if necessary, operational restrictions not required by underlying applicable requirements, but necessary to ensure ongoing compliance with one or more of the underlying applicable requirements. Also, if appropriate, improvements will be made to the form. The SOB will continue to be included as part of the file that is available to the public and USEPA upon issuance of the draft permit.

5. The origin and authority of each permit term and condition in the Title V permit.

Ohio EPA's response: Ohio EPA already has revised the general terms and conditions to identify the origin and authority for each of the general terms and conditions. This change was implemented for all Title V permit actions (draft, preliminary proposed, proposed, and final) issued on and after January 9, 2002. Further, Ohio EPA commits to include the origins of authority for all the special terms and conditions in the renewals of the Title V permits.

6. The public's and USEPA's ability to track applicable requirements associated with insignificant activities.

Ohio EPA's response: To address this concern, Ohio EPA agrees to list the permit to install (PTI) number (if a PTI has been issued) next to the emissions unit number for each insignificant activity listed on the State only enforceable side of the permit. Ohio EPA will begin to include these PTI numbers in the renewals of the Title V permits. The initial Title V permits are scheduled for renewal later this year.

In the past, we made several other adjustments to the administration of Ohio's Title V permit program as required by USEPA. These adjustments included our commitment to correct the earlier Title V permits upon renewal to include a SOB and to move the "best available technology" requirements established in permits to install to the State/federal enforceable side of the Title V permit. Also, I have attached a copy of my March 15, 2002 letter to you that submitted Ohio EPA's commitment and schedule to complete the processing of the remaining backlogged Title V permit applications by no later than September 1, 2003.

USEPA has requested further clarification as to how our Title V permit program meets the requirements of Section 504(a) of the Clean Air Act, specifically that "the results of any

required monitoring are reported.” We were surprised to hear of this request because anyone who is familiar with Ohio’s Title V permit program and who has reviewed permits prepared by Ohio EPA must recognize that most of the permits contain extensive monitoring, record keeping and reporting requirements. These requirements are designed to ensure ongoing compliance with all the applicable requirements specified in the permit.

To meet section 504(a), the Ohio EPA has focused on the reporting of “the results of any required monitoring” that show deviations, rather than all the results. In many cases, the permit requirements generate large amounts of data and information by the regulated entity. This data and information must be carefully reviewed and analyzed by the regulated entity to determine what must be reported to Ohio EPA to meet the reporting requirements of the permit. The reporting requirements generally focus on the reporting of deviations of emission limitations, operational restrictions, and control device operating parameter limitations on a quarterly basis or as otherwise required by the specific rules (e.g., the VOC rules). For some emissions units, the regulated entity is required to submit to Ohio EPA all of the data and information collected for a specific applicable requirement.

Furthermore, we want to clarify that Ohio’s current rules and general boilerplate Title V permit terms and conditions require deviations from the monitoring, record keeping and reporting requirements (including monitoring downtime and frequency of monitoring) to be identified in the semiannual deviation reports.

USEPA has indicated that there is a need to add clarifying language to the boilerplate Title V permit terms and conditions to ensure that the reporting requirements are more clearly stated in future permits. For example, the permit terms are not clear as to what types of information should be provided to adequately “identify” each deviation. My staff is willing to work with your staff in developing the clarifying language, and project having the clarified terms and conditions prepared and placed in our future Title V permits by May 15, 2002.

The final issue of concern is that my staff believes that the magnitude, if applicable, of a deviation normally would be part of the expected information reported by the permit holder in quarterly and semi-annual reports. However, Ohio EPA will commit to clarify that this information is required when reporting a deviation by revising the general boilerplate Title V permit terms and conditions by May 15, 2002.

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Should you have any questions, please feel free to contact Tom Rigo, Division of Air Pollution Control at 614/644-3626. In advance, we thank you for your prompt review.

Sincerely yours,

signed by Christopher Jones

Christopher Jones
Director
CJ/TGR

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